IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

MFA.No. 501 of 2002(A)

WCC.59/1998 of COMMISSIONER OF W.C..,THRISSUR
.....

APPELLANT: 2ND OPP.PARTY

NEW INDIA ASSURANCE COMPANY LTD.,
BRANCH OFFICE,MADAPURAMBIL CHAMBERS,M.G.ROAD,
MUVATTUPUZHA.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: APPLICANT AND OPP.1
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1. JOBY S/O.ANTONY,PANJIKARAN HOUSE,
RESIDING AT MANGALASSERY DESOM,KORATTY
KIZHAKKUMMURI VILLAGE,MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

2. MUHAMED S/O.KUNJAMMA,KOLLAMMAVUKUDIYIL
HOUSE,WARD NO.8,MUVATTUPUZHA. (DELETED).

NAME OF SECOND RESPONDENT DELETED FROM PARTY ARRAY
AS PER ORDER DT.20.2.06 IN IA.351/06.

BY ADV. SRI.P.V.BABY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.3016 OF 2002 IN MFA.501 OF 2002:

DISMISSED.

20.9.2007 Sd/-
K.HEMA, JUDGE

/TRUE COPY/

PA TO JUDGE

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 501 OF 20O2

Dated this the 20th day of September, 2007

JUDGMENT

Koshy, J.

The first respondent suffered personal injuries in an accident occurred during the course of employment. He claimed compensation before the Commissioner for Workmen's Compensation. The injuries suffered as per Exhibit A3 medical certificate is as follows:

> "1. Lacerated wound 5 cm right side forehead.
> 2. Abrasion left hand dorsum.
> 3. Abrasion right knee and skin.
> 4. Contusion right elbow."

There was no fracture. However, the doctor certified that there is 10% physical disability and 30% functional disability as a driver. The Tribunal, therefore, awarded compensation for 30% loss of earning capacity. It is true that under Section 4(1) (c) (ii), if the injury is not a schedule injury, loss of earning capacity has to be assessed by the Commissioner on the basis of the certificate issued by the medical practitioner. But the medical practitioner cannot arbitrarily assess the percentage of loss of earning capacity. The medical practitioner

has to assess loss of earning capacity as mentioned under Explanation-II to Section 4(1) (c) (ii) which reads as follows:

> "Explanation II: In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I"

Here assessment was not done properly as provided under the Act and there is no material at all to assess 30% as the loss of earning capacity for abrasions suffered by him. We are of the opinion that at the maximum compensation can be granted for 10% loss of earning capacity, considering the nature of injuries suffered by the claimant. If that be so, compensation payable will be

$$2000 \times \frac{60}{100} \times 222.71 \times \frac{10}{100} = 26725.2$$

That amount with 12% interest from the the date of accident (25.3.1997) till the date of deposit (25.4.2002) should be disbursed to the claimant. The excess amount deposited shall be refunded to the appellant Insurance Company. The appeal is allowed partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.501 OF 2002

JUDGMENT

20.9.2007